CF0000059422

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CrA 466/96 (2)

APPEAL OF PRISONER

No. 3534 Name मंगल Division Bench (Criminal)

Father's name हीरासिंह लोधी निवासी लमेरा नगर (रघुर) हाल मु. - डाट थाना - पाटन

Residence जिला - दुर्ग (म.प्र.) Age 25 वर्ष

Sentenced to 7 वर्ष, आजीवन कठोरतम, 5 वर्ष (सश्रम) रु. 500/- रु. 6 माह R.I. On 13. 2. 1996

Under section 376, 302, 201 भादवि by न्यायालय तृतीय अपर सत्र न्यायाधीश, दुर्ग (म.प्र.)

S.T. NO. 207/95

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ....

2 Date on which copy received 17. 2. 1996

3 Date on which Appeal sent 26. 2. 1996

4 Whether the prisoner wishes to be represented or not – Yes / No

No. 3534 Name मंगल s/o हीरासिंह लोधी

Confined in के-ए-ब्लॉक Jail केन्द्रीय जेल रायपुर (म.प्र.)

No. 198 /जिला/96 Dated 26. 2. 1996 199 .....

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ द्वितीय अतिरिक्त जिला एवं सत्र न्यायाधीश उच्च न्यायालय मध्यप्रदेश जबलपुर

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

अपीलकर्ता :- निर्णय क्रमांक 207/95 की प्रमाणित निर्णय प्रतिलिपि ।

Superintendent
Central Jail, Raipur. (M.P.)
Jail

Date of receipt in ..... office .....

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

No ..... Dated ..... 199.....

Forwarded to the .....

Date of receipt in Appellate Court .....

High Court of Madhya Pradesh
JABALPUR
7 MAR 1996
Reg. No. 139
Recept Clerk
High Court, Jabalpur

(P. T. O.)

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(12)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Criminal Appeal 466/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench:
HON'BLE SHRI LC BHADOO &
HON'BLE SHRI VK SHRIVASTAVA,J J.

20-12-2005

Shri Ram Krishna Sharma, counsel for the accused/appellant.

Shri Alok Bakshi, Additional Public Prosecutor for the respondent/State.

Heard.

Oral Judgment.

By this appeal, through Superintendent, Central Jail, Raipur, the accused/appellant Mangal has questioned the legality of judgment of conviction and order of sentence dated 13.02.1996 passed by 3rd Additional Sessions Judge, Durg in Sessions Trial No.207/95, whereby the learned Additional Sessions Judge, after holding the accused/appellant guilty for commission of the offence under Sections 376, 302 and 201 of the Indian Penal Code, sentenced him to undergo rigorous imprisonment for seven years, imprisonment for

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

life & rigorous imprisonment for five years and to pay a fine of Rs.500/- respectively. All the sentences were directed to run concurrently.

The case of the prosecution, in brief, is that Gaitram (PW1) and his two daughters namely Shakun Bai (PW2), and Santoshi (since deceased), and husband of Shakun Bai - Mangal the accused/appellant were residing together in the house of Gaitram. Santoshi was married to Ramkumar a year before the incident but she was residing with her father till the date of incident. On 13.02.1995, there was a fair in the village, therefore, Gaitram left for the fair to watch the dance in the night. Shakun Bai and Santoshi also went to the fair to watch the dance. However, in the wee hours of 14.02.1995, Shakun Bai and Gaitram returned to their house but Santoshi did not return. Then a search was made to trace out her. A missing report - Ex.P/16-A of Santoshi was lodged by Gaitram at Police Station: Patan on 15.02.1995.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Another report - Ex.P/17-A was lodged on 17.02.1995. On 20.02.1995, Mannu Lal (PW8) saw a jute bag in the well, which was in his agricultural field of Madia, and intimation to that effect was given to the Police Station: Kumhari on the same day. After receiving the information, Police came and the jute bag was taken out of the well. On opening the bag, it was found that there was a female body and the same was identified of Santoshi, upon which Dehati Nalisi - Ex.P/20 and merg intimation - Ex.P/19 were recorded. After enquiry, first information report Ex.P/18 was registered in the Police station Bhilai on 21.02.1995. The case was registered under Sections 302 and 201 of the IPC as crime No.13/95. The Panchanama (Ex.P/8) of the body of Santoshi and a site plan -(Ex.P/7) were prepared. Dead body of Santoshi was sent for postmortem to Dr.D.C Jain, Medical College, Raipur, who prepared postmortem report (Ex.P/5). He opined that cause of death was asphyxia due to strangulation. During the	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

investigation, it was also suspected that rape was committed on Santoshi. The accused/appellant was taken into custody on 23.02.1995 at about 10 p.m. During Police custody, the accused/appellant gave a memorandum (Ex.P/13) under Section 27 of the Indian Evidence Act regarding the ornaments of the deceased i.e. one pair silver pairpatti (Anklets), silver Sati, silver Mangalsutra and Bichia and in pursuance of that memorandum, those ornaments were recovered under Ex.P/14.

After completion of the investigation, charge sheet was filed on 21.03.1995 in the Court of Judicial Magistrate First Class, Durg, who in turn committed the case to the Sessions Judge Durg, from where the 3rd Additional Sessions Judge received the case for trial.

The prosecution in order to establish the charge against the accused/appellant examined 11 witnesses. The statement of the accused/ appellant has been recorded under Section 313 of the Cr.P.C.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

in which he denied the prosecution evidence and stated that he has falsely been implicated in the crime.

Learned additional Sessions Judge after hearing the argument of learned counsel for the parties, convicted and sentenced the accused as mentioned in para one of this judgment.

We have heard learned counsel for the parties, perused the judgment of the trial Court and evidence available on record.

Shri Ram Krishna Sharma, learned counsel for the accused/ appellant argued that there is no ocular or direct evidence to connect the accused with the rape and murder of Santoshi. He further argued that whole case rests on the circumstantial evidence i.e. the ornaments of the deceased were recovered at the instance of the accused and there is no evidence on record to prove the fact that the ornaments which were recovered at the instance of the accused were of the deceased Santoshi. There is no direct evidence to connect the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused with the crime; therefore, the conviction by the trial Court is bad in law.

On the other hand, Shri Alok Bakshi, learned Additional Public Prosecutor supported the judgment of the trial Court.

It is true that there is no ocular or direct evidence in this case to connect the accused with the murder of Santoshi and committing rape on her and also concealing her body to cause dis-appearance, in order to save himself from the legal punishment. The whole case rests on the circumstantial evidence i.e. recovery of the ornaments of the deceased at the instance of the accused / appellant. While the accused / appellant was in custody, he gave a memorandum (Ex.P/13) under Section 27 of the Indian Evidence Act regarding the ornaments of the deceased i.e. one pair silver pairpatti, silver Sati, silver Mangalsutra and bichia and in pursuance of that memorandum, those ornaments were recovered under Ex.P/14.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In order to convict the accused on the basis of circumstantial evidence the prosecution has to prove the offence as per the settled principles laid down by the Hon'ble Apex Court in the case of ***Nasar Ahmed Vs. State of Bihar reported in AIR 2001 Supreme Court 2416*** i.e., in a case based on circumstantial evidence, before the Court can record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point only to the guilt of the accused and are not capable of any explanation; which is not consistent with the hypothesis of the guilt of the accused.

Now we shall proceed to examine the evidence adduced by the prosecution in order to establish the charge against the accused / appellant. Mannu Lal (PW8) first saw the jute bag in the well which

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was situated in his agricultural field. He gave information to the Police and the jute bag was taken out from the well. When it was got opened the dead body of Santoshi was found in the bag and memorandum (Ex.P/8) to that effect was prepared. Mannu Lal further stated that the accused gave memorandum (Ex.P/13) that he has kept the ornaments of Santoshi in the house, that memorandum bears Mannu Lal's signature. In pursuance of that memorandum, one pair silver pairpatti, silver Sati, and silver Mangalsutra were recovered which were kept on the "Patav" of his house and they were taken into possession under Ex.P/14. Other witness Gokaran Singh has not been examined. The Investigating Officer (PW/11) YS Mishra has stated that while in the police custody, the accused gave a memorandum (Ex.P/13) and in pursuance of that one pair silver pairpatti, silver Sati, silver Mangalsutra and Bichia which were kept on

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -9-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the "Patav" of the house of accused were recovered at the instance of the accused and memorandum (Ex.P/14) was prepared.

In order to establish that the said ornaments belong to the deceased Santoshi, the prosecution examined Ramkumar (PW4), husband of the deceased. He stated that the identification memo (Ex.P/1) bears his signature and in the cross examination, he has stated that he had not identified the ornaments. He has not stated in his evidence that the ornaments belonging to Santoshi were identified by him. Even father-in-law of Santoshi, Panchuram (PW3) has not stated anything about the identity of the ornaments. Similarly, Shakuni Bai (PW2), elder sister of Santoshi has been examined; in para 4 of her evidence, she has stated that Santoshi went to watch the dance after wearing the ornaments; but she has not disclosed the identity of those ornaments and that the recovered ornaments were of Santoshi. Father of Santoshi Gaitram (PW1) has also not identified

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 10 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the ornaments. Therefore, there is no legal evidence on record which shows that the ornaments which were recovered at the instance of the accused were of Santoshi and in the absence of such evidence, the accused can not be connected with the crime of the murder and rape of Santoshi.

As per the prosecution evidence, the accused was also residing with Gaitram (PW1), but while lodging missing report of Santoshi, it was not mentioned that Mangal - present accused / appellant was also missing from the house. Even in the 1st report Ex.P/16-A, it was not mentioned that deceased Santoshi was wearing the ornaments when she went to watch the dance in the fair. Therefore, there is no legal evidence, which connects the accused / appellant with the murder of Santoshi.

Except the recovery of ornaments at the instance of the accused, there is no other evidence to connect the accused with the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 11 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

crime. As far as the offence under Section 376 of the I.P.C. is concerned, there is no evidence connecting the accused with the offence of rape on Santoshi. Even in the medical evidence, there is no finding that any rape was committed on her before committing her murder. Similarly, there is no evidence that the accused caused dis-appearance of body of Santoshi in order to his escape from the legal punishment.

For the foregoing reasons, the finding of the trial Court holding the accused/appellant guilty of the offences under Sections 376, 302 and 201 of the IPC cannot be sustained.

In the result, the appeal succeeds. The conviction and sentence imposed on the accused / appellant under Sections 376, 302 & 201 are set aside and he be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. BHADOO
Judge

Sd/-
Vijay Kumar Shrivastava
Judge

Padma

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